

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**JOHN JENNINGS, II**

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**Case No.: 3:06cr126-WHA**

**MOTION TO SUPPRESS SEARCHES**  
**(Evidentiary Hearing Requested)**

**COMES NOW**, the Defendant, John Jennings, II, by and through undersigned counsel, Kevin L. Butler, and pursuant to the Fourth Amendment to the United States Constitution, moves this Court for an Order suppressing the search of:

- 1) Mr. Jennings' internet mail and communication accounts;
- 2) 1516 Bay Area Blvd. Apt. 22, Houston, Texas 77058; and
- 3) any personal bags and belongings of Mr. Jennings searched on or about April 25, 2006.

**Facts**

Mr. John Jennings II is 23 years old and mentally retarded. He was enrolled in special education courses until the age of 20. His verbal intellectual quotient (IQ) has been determined to be, at best, 76. Mr. Jennings' thought process is often tangential and "Mr. Jennings will struggle when faced with lengthy or detailed verbal explanations of various issues." See Docket #19, BOP Forensic Psychiatric Report at p.7.<sup>1</sup> He is capable of understanding some written information if it is presented to him in a simplistic way and simplistic terms. Id. However, to help insure

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<sup>1</sup> The defense is still attempting to locate and retrieve a complete set of Mr. Jennings' mental health and academic records. However, Mr. Jennings was arrested in Houston, Texas and all relevant documents and records are located outside of the Middle District of Alabama.

comprehension, when possible, pictures and charts should be used when communicating with him.  
Id.

On April 25, 2006, United States Postal Agents sought Mr. Jennings' consent to search: 1) Mr. Jennings' internet mail and communication accounts; 2) a residence located at 1516 Bay Area Blvd. Apt. 22, Houston, Texas 77058; and 3) Mr. Jennings' personal bags and belongings.<sup>2</sup> For authorization to conduct these searches, Mr. Jennings was presented three separate consent forms which outlined who would conduct the search, the places to be searched, the items to be seized, the possible uses of any items taken, Mr. Jennings' right to refuse the search and (if given) Mr. Jennings' authorization. Mr. Jennings signed each form.

However, because of his mental limitations, lack of mental capacity and his inability to understand the lengthy or detailed written explanations of the matters outlined in the consent form, Mr. Jennings was unaware of the nature of his actions when he signed the form and did not know the consequences of his actions. Therefore, the searches executed pursuant to these consent forms must be suppressed.

### **Argument**

The Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." Const. Amend IV. "[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 88 S.Ct. 507, 514 (1967) (internal citations

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<sup>2</sup> The location of the "personal bags and belongings" is unclear from the discovery provided.

omitted).

One exception to the Fourth Amendment warrant requirement is a “consent” search. See *United States v. Purcell*, 236 F.3d 1274 (11<sup>th</sup> Cir. 2001). The government bears the burden of proving a person, with legal authority, freely and voluntarily granted law enforcement permission to search a location. *Florida v. Royer*, 469 U.S. 491 (1983). Free and voluntary consent, “requires a determination that the person was mentally competent to understand the nature of his act ... and gives knowing approval” for the search. *United States v. Elrod*, 441 F.2d 353, 355-356 (5<sup>th</sup> Cir. 1971). If as a result of mental limitations the consenter did not understand the nature of the act/consent, the search must be suppressed. *Id.*

Because of Mr. Jennings’ mental limitations and because the form was a confusing written document (as compared to an illustrated document), Mr. Jennings did not knowingly and intelligently sign the consent forms. Mr. Jennings was neither aware of the content of the document nor the Fourth Amendment rights he was giving up by providing his consent.<sup>3</sup> Additionally, he had no understanding of the adverse ramifications that could result from his consent. Therefore, the subsequent searches must be suppressed.

**WHEREFORE**, Mr. Jennings asks this Court to enter an order suppressing all evidence seized pursuant to the consent forms signed by John Jennings, II on April 25, 2006.

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<sup>3</sup> At this time, undersigned counsel is unsure whether Mr. Jennings understands what his Fourth Amendment rights are.

Dated this 20<sup>th</sup> day of September 2006.

Respectfully submitted,

s/ Kevin L. Butler  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Susan Redmond, Esquire  
Assistant United States Attorney  
One Court Square, Suite 201  
Montgomery, Alabama 36104

Respectfully submitted,

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